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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CLERK

STATE OF TEXAS,)
)
 Rick Perry, Governor of Texas,)
 Greg Abbott, Attorney General of)
 Texas,)
 Texas Commission on)
 Environmental Quality,)
 Texas Department of Agriculture,)
 Texas Railroad Commission,)
 Texas General Land Office,)
 Texas Public Utility)
 Commissioners Barry)
 Smitherman, Donna Nelson,)
 and Kenneth Anderson,)
)
 PETITIONERS,)
 v.)
)
 UNITED STATES)
 ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 RESPONDENT.)
)

10-1425

Case No.

PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702, and Rule 15(a) of the Federal Rules of Appellate Procedure, the State of Texas, Rick Perry, Governor of Texas, Greg Abbott, Attorney General of Texas, the Texas

Commission on Environmental Quality, the Texas Department of Agriculture, the Texas Railroad Commission, the Texas General Land Office, and Texas Public Utility Commissioners Barry Smitherman, Donna Nelson, and Kenneth Anderson hereby petition the Court for review of the final action of the respondent United States Environmental Protection Agency published in the *Federal Register* at 75 Fed. Reg. 82, 430 (Dec. 30, 2010) and titled “Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program” (“Partial SIP Disapproval”).

Congress has stated that “the law must provide that the governors shall be governed and the regulators shall be regulated, if our present form of government is to endure.” EPA violates this precept, abusing its powers in an attempt to evade citizen participation in the regulatory process. The Agency relies on its emergency administrative powers to coerce a result that Congress never intended and that the Agency has been unable to achieve through the appropriate regulatory process. And now, the day before a holiday weekend, the Agency issues a sweeping and unlawful action, in a transparent attempt to prevent the State of Texas and its citizens not only from commenting on EPA’s unlawful action, but from even knowing about it.

The Partial SIP Disapproval is contrary to both the Clean Air Act and the fundamental principles of administrative law. Recognizing the proper role of the States, the Clean Air Act declares pollution prevention to be “the primary responsibility of States and local governments,” and not the federal government. 42 U.S.C. § 7401(a)(3). EPA rejects that approach and seeks to deprive Texas of its right to manage its air resources. The Partial SIP Disapproval is particularly pernicious because it unlawfully attempts to partially disapprove Texas’ environmental laws in the face of the State’s admirable track record of reducing pollution and improving air quality in the State. Instead, EPA seeks to federalize that power by imposing federal control and commandeering critical portions of Texas’ emissions permitting program.

The result is an action that is arbitrary and capricious, and contrary to law, because it seeks to use an administrative power designed to correct minor errors to disapprove Texas laws that EPA knowingly approved nearly two decades ago. The American people have demanded accountability from their government, but the Partial SIP Disapproval is an exercise in administrative fiat.

A State and its citizens are irreparably harmed where a federal administrative agency blocks the operation of proper and effective state laws. This regulation accomplishes no discernable environmental benefit. The amount of greenhouse gas emissions that would be avoided under this regulation is miniscule;

indeed, it is impossible even to measure. The State of Texas therefore will request that the Court stay the Partial SIP Disapproval pending resolution of the instant Petition.

Dated: December 30, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2010, I served a copy of the foregoing Petition for Review by first-class mail, postage prepaid on the following:

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By: /s/ Andrew M. Grossman
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